set out. I accept the explanation by the defence of the reduction to $39 for the months of September, October and November 1947, and I find that the wages credit was included in the overall negotiations which resulted in the agreed sum payable to the plaintiff by the defendant of $2,700.

This is an unliquidated demand. The plaintiff disputes the defendant's *bona fides*. Had the books and accounts been properly gone into at an earlier stage some firmer basis might have been found, but I must try this cause on the evidence the parties chose to bring before the Court. An order was obtained to inspect, and the plaintiff alleges it was disobeyed; he had his remedy, and if he did not elect to pursue it, this Court cannot well demand books and accounts in the endeavour to convert a business dispute on profits to a liquidated debt.

It is clear from the evidence of the President of the Indian Chamber of Commerce (3rd witness) that the parties approached him to settle a business dispute. The plaintiff was very properly told that as he could furnish no detail, he would be well advised to settle, and to this the parties agreed, the complaint before the Indian Chamber of Commerce being withdrawn.

Then Badsha (2nd D.W.) conducted the negotiations, which were concluded on the evening of the 3rd of December, 1947, by the signing of Ex. I/21.

This agreement, voluntarily entered into by the plaintiff, discharged the unliquidated or uncertain and disputed demand by the payment to the plaintiff of the sum of $2,580. (*Cumber v. Wane*[6]). It cannot be set aside. It follows in consequence that the prayer for account must be refused.

Judgment is therefore entered for the plaintiff against the defendant for the admitted sum of $2,580.

Whereas no instalment has been paid as set out in the agreement (Ex. I/21) interest at the rate of 4% per annum will run to the date of this decree (R.S.C., O. 34, r. 42 Mallal's Straits Settlements Practice, page 229), on the item of $580 with effect from the 15th of January, 1948, and the five monthly instalments each of $400 with effect from the respective dates on which each instalment fell due, that is to say, the 15th of February, 1948, the 15th of March, 1948, the 15th of April, 1948, the 15th of May, 1948, and the 15th of June, 1948.

The costs of this suit shall be borne by the defendant up to the date of admission of liability, that is to say, the 22nd of April, 1948 and afterwards by the plaintiff; provided that any costs incurred by the plaintiff in consequence of errors by the defendant in his pleadings and amended on the record at the opening of the trial, shall be allowed the plaintiff.

Order accordingly

PUBLIC PROSECUTOR v. AMAR SINGH.

[O. Cr. J. (Storr J.) September 28, 1948]

[Ipoh — Criminal Trial No. 26 of 1948]

Criminal Trial — Identification — Penal Code s. 387.

In this case the accused was charged with attempted extortion. The evidence showed that the accused was arrested nearly two years after the alleged offence and was then produced to the witnesses in the gaol. No identification parade was held.

Held: (1) the usual and proper way of identifying persons suspected of a particular crime is to hold a proper identification parade; (2) on the facts and apart from the identification at the gaol there was a reasonable doubt as to the accused's participation in the offence and he ought therefore to be acquitted.

CRIMINAL TRIAL.

M. G. Neal (D. P. P.) for the Public Prosecutor.

Accused in person.

Storr J. : — In this case the accused was charged as follows :—

That you on or about the 1st May, 1946, at Changkat Tin, Tanjong Tualang, in the State of Perak, with 2 others unknown, in order to the committing of extortion attempted to put one Arokiam s/o Sinnappan in fear of a certain injury, to wit, death and thereby committed an offence punishable under s. 387 of the Penal Code.

The facts of the case briefly were that Arokiam, a bullock carter who, at that time, lived at Changkat Tin, Tanjong Tualang, had been robbed on the 29th of April, 1946, by 13 persons, and 2 days later, on 1st May, 1946, 2 Chinese and a Bengali came to his house and demanded $500 which, after a certain amount of haggling, was reduced to $200 under threat that if it was not paid he would be put in a sack, taken away, and cut to death. His evidence on this point was corroborated by his wife Silvamarie. He said that he made a report of the robbery some 2 days after the occurrence and at the same time reported this attempted extortion. However, the report, although not produced by the prosecution, was produced by Sergeant 527 of Tanjong Tualang, who recorded it, and who was called by the Court, and it was found that in that report no mention of any extortion was made.

Arokiam in his evidence said that the accused was the Bengali in the case. He further said: "I was able to identify the accused as I had known him for 5 years before that. I had known him quite well. We had met several times at the toddy shop and drank toddy." But in cross-examination by the accused he said: "No, I did not mention your name in the report because I did not know it .... You were not living

in that area where I live. I do not know your house so I cannot say if it is 2 miles away from mine or not." Further, he said: "I have not made any mistake. You were the person who came and demanded money. Although your face was partly covered I could still recognise you and besides that I recognised your voice also."

His wife Silvamarie said, referring to the accused: "I had seen the Bengali near my house before the robbery. I had seen him several times and on one occasion I spoke to him."

The accused in his defence denied the allegations that he was concerned in any extortion.

The whole case really turns on the identification of the accused and as to whether such identification by the witnesses can be relied upon. The prosecution produced no evidence at all to show that either of the witnesses gave a description of the accused at the time of the offence, but they called the O.C.P.D., Batu Gajah, A.S.P. Sarmukh Singh, who said that "the accused was under arrest" in Batu Gajah gaol, and that he fetched the 2 witnesses from Teluk Anson on the 29th of March, 1948 — nearly 2 years after the offence — and then without having an identification parade which, after such a lapse of time one would expect would have been held, he produced the accused to the witnesses in the gaol, and they, after he was produced said they identified him as the man who, 2 years before, had been concerned in the incident of extortion. I asked him why there had not been an identification parade and he informed me that it was not the practice in case of a man who was known for five years by witnesses to hold identification parades. He also stated that "they told me he was a person living at Ayer Papan, which was 2 miles from Changkat Tin." This, however, could not have been the case as Arokiam in his evidence said that he did not know where his house was, and that he could not say if it was 2 miles away from his or not. I therefore consider that the identification at Batu Gajah gaol amounts to no identification at all, and that the usual and proper way in such cases would have been to hold a proper identification parade. Apart from this identification at Batu Gajah gaol there is really no evidence of identification of the accused as there is no evidence that a report was made of this offence or that any description of the accused was given at that time. The accused denied his presence at the time of the offence and I consider that, on the whole of the case, there is a reasonable doubt as to his participating in the offence. He is therefore acquitted.

Accused acquitted.

CHEONG SEE LEONG v. PUBLIC PROSECUTOR.

[C. A. (Willan C.J., Spenser Wilkinson and Russell JJ.) September 29, 1948]

[K. L. — F.M. Criminal Appeal No. 100 of 1948]

Criminal Law — Statement to a Police Officer — Statement made to Police Inspector through interpretation of Detective Sergeant — Likelihood of bias — Emergency Regulations, 1948, regs. 6(1) and 33.

In this case the appellant was convicted of an offence under reg. 6(1) of the Emergency Regulations 1948, that he, knowing that one Chan So had under his control an unlicensed firearm failed to report this to the Police an the earliest possible opportunity. At the trial evidence was given of a statement of the appellant alleged to have been made to the Inspector through the interpretation of a Detective Sergeant, who was a member of the Police party which raided the hut where Chan So and the appellant were found. Reg. 33 of the Emergency Regulations, 1948, provided that "Where any person is charged with any offence against these Regulations — any statement, whether such statement amounts to a confession or not — and whether in the course of a Police Investigation or not, by such persons to or in the hearing of any Police officer of or above the rank of Inspector shall — be admissible at his trial in evidence . . . ." On appeal, it was argued that the statement of the accused should not have been admitted in evidence.

Held: (1) although the statement was made through an interpreter, it was a statement made by the appellant to a Police Inspector and so came within the provisions of reg. 33 of the Emergency Regulations; (2) the principle that a judicial officer who is interested in a case should not sit to adjudicate upon it, applies in regard to interpreters; (3) the use of the detective Sergeant, who was fully conversant with the material facts and was subsequently called by the prosecution as their principal witness to prove those facts, as an interpreter in taking the statement from the appellant, offended against the elementary ideas of justice and therefore no reliance could be placed on the accuracy of the statement.

Case referred to:—

(1) *Ah Soi v. King-Emperor* A.I.R. 1926 Calcutta 922.

CRIMINAL APPEAL.

T. K. Sen for the appellant.

B. G. Shields (D. P. P.) for the respondent.

The judgment of the Court of Appeal was delivered by:—

Spenser Wilkinson J.: — The appellant was charged under Regulation 6(1) of the Emergency Regulations, 1948, that he, knowing that one Chan So had under his control an unlicensed fire-arm, failed to report this to the Police at the earliest possible opportunity. He was convicted on this charge and sentenced to 5 years rigorous imprisonment.

The main evidence against the appellant was that of Detective Sergeant No. 180 who deposed that upon approaching a certain hut with a Police party at 9.00 a.m. on the 16th July, 1948, he saw in the doorway of the hut Chan So, the man referred to in the charge, and also saw the appellant about four yards from the